

09/776, 787

CASE VA/H-33198



FILING BY "EXPRESS MAIL" UNDER 37 CFR 1.10	
EU546144915	January 10, 2006
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE

KNAPE ET AL.

PATENT NO: 6,974,577

FILED: FEBRUARY 4, 2003

ISSUED: DECEMBER 13, 2005

FOR: INACTIVATED BOVINE SCOURS VACCINES, PROCESS AND  
METHOD OF PREVENTING BOVINE SCOURS

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION  
OF PATENT TERM ADJUSTMENT

Sir:

The Office issued U.S. Patent 6,974,577 on December 13, 2005. The Office calculated the Patent Term Adjustment under 35 U.S.C. § 154(b) to be 575 days. The undersigned believes that the Office's calculation to be incorrect and that the correct Patent Term Adjustment is 664 days.

37 C.F.R. § 1.705(d) states that any Request for Reconsideration of Patent Term Adjustment must be filed within two months of the issuance of a patent. This Request for Reconsideration of Patent Term Adjustment is being filed on the date indicated above which is on or before February 13, 2006. As such, this Request for Reconsideration of Patent Term Adjustment is considered timely filed.

When the Office issued the Notice of Allowance and the Office's initial calculation of the PTA, the undersigned believed that the Office awarded to Novartis too many days. The undersigned felt that the Office incorrectly calculated the PTA by not deducting a certain number of days because of Novartis' delay.

01/13/2006 MAHME2 00000116 190134 6974577

01 FC:1455 200.00 DA

Adjustment date: 02/02/2006 CKHLOK  
01/13/2006 MAHME2 00000116 190134 6974577  
01 FC:1455 200.00 CR

In order to comply with the undersigned's duty of candor, the undersigned attempted to notify the Office of its mistake. Because the undersigned was not requesting additional time but rather a reduction in the PTA, the undersigned sent a "Letter Regarding Shortening Of Patent Term Adjustment" to the Office to point out the error and to try to correct it. A copy of this "Letter" is attached. This "Letter" was submitted on August 1, 2005.

Yet, in calculating the final PTA, the USPTO incorrectly deducted 120 days for the submission of this "Letter". This "Letter" did not qualify as any document which would count as a delay by Novartis for which the 120 day deduction was taken.

Enclosed is a document which sets out correctly the events, the deadlines, and if there were delays on either Novartis' side or the USPTO's side, and the number of days of the delay.

This document indicates that the USPTO delayed 449 days after the 14 month deadline for sending out the first substantive Office Action, delayed 234 days for sending out the Notice of Allowance, and delayed 12 days for issuing the patent. The USPTO delayed a total of 695 days.

The document indicates that Novartis delayed in responding to the non-substantive first Office Action. This was Novartis' only delay. The submission of the "Letter" on August 1, 2005, to correct the PTA does not qualify as a delay by Novartis. Yet the Office deducted 120 days from Novartis' time as a result of this letter.

695 days (USPTO delays) – 31 days (Novartis delays) = 664 days.

**As such, Novartis should receive an additional 664 days for the PTA.**

This patent is not subject to a terminal disclaimer. There were no circumstances during the prosecution of the application which constitutes a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704.

This Request is being accompanied by the fee set forth in 37 C.F.R. § 1.18(e) which is \$ 200.00 which the Commissioner is authorized to charge to Deposit Account 19-0134.

Respectfully submitted,

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(862) 778-7922

  
David L. Marks  
Attorney for Applicants  
Reg. No. 37,881

Date: January 10, 2006

**UNITED STATES PATENT & TRADEMARK OFFICE**  
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND											
1 Date of Request: <u>2/1/06</u>		2 Serial/Patent # <u>6,974,577</u>									
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT							
	Filing			\$							
	Amendment			\$							
	Extension of Time			\$							
	Notice of Appeal/Appeal			\$							
<input checked="" type="checkbox"/>	Petition		1/10/06	\$ 200.00							
	Issue			\$							
	Cert of Correction/Terminal Disc.			\$							
	Maintenance			\$							
	Assignment			\$							
	Other			\$							
			7 TOTAL AMOUNT OF REFUND	\$ 200.00							
8 TO BE REFUNDED BY:											
10 REASON:		Treasury Check									
	Overpayment	Credit Deposit A/c #:									
	Duplicate Payment	9 <table border="1" style="display: inline-table; text-align: center; width: 150px;"><tr><td>1</td><td>9</td><td>--</td><td>0</td><td>1</td><td>3</td><td>4</td></tr></table>			1	9	--	0	1	3	4
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<input checked="" type="checkbox"/>	No Fee Due (Explanation):										
PTA - candor letter											
11 REFUND REQUESTED BY:											
TYPED/PRINTED NAME: <u>Cliff Congo</u>		TITLE: <u>Attorney</u>									
SIGNATURE: <u>Cliff Congo</u>		PHONE: <u>571-272-3207</u>									
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